

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ROBERTA E. OLKO,

Plaintiff,

v.

COMMISSIONER OF  
SOCIAL SECURITY,

Defendant.

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Case No. 05-72815

Honorable Patrick J. Duggan

**OPINION AND ORDER**

At a session of said Court, held in the U.S.  
District Courthouse, Eastern District  
Of Michigan, on May 30, 2006 .

PRESENT: THE HONORABLE PATRICK J. DUGGAN  
U.S. DISTRICT COURT JUDGE

Plaintiff Roberta E. Olko applied for Social Security Disability Insurance Benefits on September 16, 2002, alleging disability since August 22, 2002, due to severe joint pain caused by peripheral vascular disease. The Social Security Administration denied Plaintiff benefits. A de novo hearing was held on March 31, 2004, before an Administrative Law Judge (“ALJ”).

Following the hearing, the ALJ determined that Plaintiff was not entitled to disability benefits because, although her back and leg pain prevented her from doing jobs that require any more than occasional climbing, balancing, stooping, kneeling, crouching, or crawling, she could return to her past light work as a quality control inspector, machine operator, and

deli cutter. (Tr. 24). The ALJ's decision became the Commissioner's final decision when the Appeals Council denied Plaintiff's request for review. (*See* Tr. 4-6).

On July 18, 2005, Plaintiff sought judicial review of the Commissioner's final decision in this Court pursuant to 42 U.S.C. § 405(g). On January 9, 2006, Plaintiff filed her Motion for Summary Judgment and on February 24, 2006, Defendant the Commissioner of Social Security filed its Motion for Summary Judgment. This Court had previously referred all non-dispositive motions and the issuance of a report and recommendation to Magistrate Judge Donald A. Scheer in an Order dated July 18, 2005.

On March 27, 2006, Magistrate Judge Scheer filed his Report and Recommendation (R&R) recommending that this Court deny Plaintiff's Motion for Summary Judgment and grant Defendant's Motion for Summary Judgment. At the conclusion of the R&R, Magistrate Judge Scheer advises the parties that they may object and seek review of the R&R within ten days of service upon them. The R&R also advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal," citing *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 46 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).<sup>1</sup> Neither party filed objections

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<sup>1</sup>In *United States v. Walters*, the Sixth Circuit held that a party waives his or her right to appeal by failing to file objections to a magistrate judge's report and recommendation within ten days, provided the magistrate judge notified the parties that failure to file objections constitutes a waiver of appeal. 638 F.2d 957, 949-50 (6th Cir. 1981). The Supreme Court affirmed the Districts' power to impose such an administrative rule in *Thomas v. Arn*, 474 U.S. 140, 105 S. Ct. 466 (1985). *See also Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505, 508 (6th Cir. 1991). Magistrate Judge Scheer notified the parties that failure to file objections would constitute a waiver of their right to appeal; nevertheless, Plaintiff failed to file any objections to the R&R. Therefore, Plaintiff has waived her right to appeal.

to the R&R.

The Court, however, has carefully reviewed the R&R and concurs with Magistrate Judge Scheer's conclusion that Defendant's motion for summary judgment should be granted and that Plaintiff's motion for summary judgment should be denied.

Therefore,

**IT IS ORDERED** that Defendant's Motion for Summary Judgment is **GRANTED** and Plaintiff's Motion for Summary Judgment is **DENIED**.

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

Copies to:  
Daniel S. Palmer, Esq.  
Janet Parker, AUSA  
Magistrate Judge Donald A. Scheer